562h

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Brunswick Division

In the matter of:	Adversary Proceeding
ALPHONZO HARRIS, JR. JOY SAN HARRIS (Chapter 13 Case 88-20496)	Number 89-2003
Debtors	
ALPHONZO HARRIS, JR. JOY SAN HARRIS	
Plaintiffs	
v.	
GILMAN UNITED FEDERAL CREDIT UNION	
Defendant	

FILED
at 10 O'clock & 23 min. A M
Date 7/14/89
MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia

MEMORANDUM AND ORDER

On May 18, 1989, a trial was held on the complaint of Alphonzo and Joy San Harris ("Debtors"). The Debtors seek to hold Gilman United Federal Credit Union ("Gilman") in contempt for a willful violation of the terms of 11 U.S.C. Section 362. After consideration of the evidence adduced at trial I make the following Findings of Fact and Conclusions of

Law.

FINDINGS OF FACT

1) On September 7, 1988, the Debtors filed a Chapter 13 petition in this Court. They duly listed three debts owing to Gilman which included: (1) A secured debt in the amount of $19,000.00 with a $460.00 monthly installment on their 1986 mobile home; (2) an unsecured signature loan of Mrs. Harris in the amount of $436.00; and (3) an unsecured signature loan to Mr. Harris in the amount of $800.00. The Debtors' Chapter 13 plan proposed to pay the mortgage on the mobile home in the amount of $460.00 per month direct to Gilman and 100% to those unsecured creditors who filed claims. Gilman filed two proofs of claim in the case including: (1) A $36,184.14 secured claim which combined the debt on the mobile home and the signature loan of the husband; and (2) a $1,444.35 unsecured claim owing by the husband. Gilman did not file a proof of claim for the $436.00 unsecured signature loan of the wife.

2) In December, 1988, an agent of Gilman telephoned the Debtors in an attempt to collect the $436.00 owing to it by the wife. Apparently, Gilman had failed to realize that Mrs. Harris, as well as her husband, had filed a Chapter 13

petition.

3) On February 1, 1989, a confirmation hearing was held at which Gilman appeared and stated its concern that no proof of insurance on the mobile home had been provided to it. No motion to lift the stay was pending at the time of confirmation. The plan as proposed was confirmed. On February 6, 1989, Mrs. Harris presented proof of insurance to Gilman, and she inquired into what she would have to do to have her credit privileges reinstated with Gilman. Mrs. Lou Watson, the manager of the Credit Union, informed the Debtor that it was Gilman's policy that if a member caused the Credit Union a "loss" the member would lose his or her privileges. Further, it is Gilman's policy that all Credit Union privileges are cut off, regardless of whether there is a loss, when a member files a bankruptcy petition. Mrs. Watson suggested that Mrs. Harris could have her Credit Union privileges reinstated if she and her husband were willing to sign "extensions" on the secured and unsecured debt owing to Gilman and to authorize direct payroll deductions for the same. In particular, Mrs. Watson would require the Debtors to add the arrearages due on the mobile home to the end of the note, and make all payments due under the note directly to Gilman. In addition, Mrs. Watson would require the Debtors to pay both the $800.00 unsecured debt owed by the husband for which a proof of claim had been filed, and the $436.00 debt of the wife

for which a proof of claim had not been filed directly by Gilman, nor through the Chapter 13 Trustee. Mrs. Watson assured the Debtor that it was only on these terms that her Credit Union privileges could be reinstated.

While there is no dispute as to the terms required for a reinstatement of Credit Union privileges, there is dispute as to how much pressure Mrs. Watson brought upon the Debtor to enter into such an agreement. On the one hand, Mrs. Watson contends that she simply made the Debtor aware of the Credit Union policies and advised her to take the paperwork to her attorney for his advice and assistance. On the other hand, the Debtor contends that Mrs. Watson threatened her that if her husband did not sign the new notes and payroll deduction authorization form and return them by the next day that Gilman would "foreclose" on the mobile home.[1] Although Gilman's version

---

[1] Apparently the Debtors were in arrears on their post-petition direct payments to Gilman. Technically, Gilman could have filed a motion to lift the stay so as to allow them to proceed with state law foreclosure proceedings.

of events would suggest that their actions were a benign accomodation designed to assist the Debtor in reinstating her Credit Union privileges, I do not find them to be so. Mrs. Watson is an experienced consumer lender with two years and five months experience at Gilman, and four and a half years at Landmark Finance Company. She is, or should be, intimately familiar with the ins and outs of bankruptcy procedure. At the time she spoke with Mrs. Harris, she was acutely aware that no proof of claim had been filed on the $436.00 loan owing by the wife, and therefore, that the $436.00 would be a total loss to the Credit Union. Further, Mrs. Watson was aware that the Debtors were in default on some of their post-petition direct payments on the mobile home. Mrs. Watson knew, or should have known, that unsecured debts and arrearages paid through the Chapter 13 Trustee are not generally paid as quickly as they would be if made directly by a debtor to a creditor. Accordingly, I conclude that the Debtors' version of events is more representative of what actually happened on February 6, 1988, than Mrs. Watson's version.

CONCLUSIONS OF LAW

"The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the

debtor a breathing spell from his creditors. It stops all collection efforts, all harrassment, and all foreclosure actions." H. R. Rep. No. 595, 95th Cong., 1st Sess. 340 (1977), U.S. Code Cong. & Admin. News 1978, 5787, 6296 (emphasis added). In particular, the legislative history accompanying 11 U.S.C. Section 362(a)(6) indicates that the section was aimed at "prevent[ing] creditors from attempting in any way to collect a pre-petition debt." Id. at 342, U.S.Code Cong. & Admin. News 1978 at 6296 (emphasis added). In its entirety, the section provides:

> (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of--
>
> (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

Collier on Bankruptcy, 15 Ed., Vol. 2, §362.04, p.362-41 states:

> Paragraph 6 is intended to prevent creditor harassment of the debtor in attempting to collect pre-petition debts. The conduct prohibited ranges from that of an informal nature, such as by telephone contact or by dunning letters to more formal judicial and administrative proceedings that are also stayed under paragraph 1.

As a sophisticated commercial institution familiar with the application and broad scope of the automatic stay, Gilman knew or should have known that its actions would improperly interfere with the orderly collection and distribution of the Debtor's assets. See In re Reed, 11 B.R. 258 (Bankr. D. Utah 1981) ("A creditor will be in contempt of the stay if he abridges the protection which he reasonably should know the debtor is entitled"). When a party acts in knowing violation of the stay it takes the risk that its actions will be found wrongful. In re Amintern, Inc., 46 B.R. 566 (Bankr. M.D.Tenn. 1985). It is appropriate to award costs and attorney's fees where an entity has knowingly taken action in violation of the stay. 11 U.S.C. §362(h).

In the present case the evidence shows that the Debtors made the initial contact with Gilman regarding the reinstatement of their credit privileges. Had Gilman contacted the Debtors regarding such reinstatement, this Court would not hesitate to impose punitive sanctions. For a creditor to deal directly with a debtor who has legal representation, even if the contact is "initiated" by the debtor, is at best an unwise and hazardous act by the lender. Gilman is hereby forewarned that any future activity of this nature will be dealt with harshly by this Court.

Gilman's earlier contact in December, 1988, with the Debtors in an attempt to collect the $436.00 debt owed by Mrs. Harris is in and of itself a violation of the section 362 stay notwithstanding Gilman's contention that it was unaware that Mrs. Harris had filed a Chapter 13 petition. There need not be subjective conscious intent to do harm for an act to constitute a willful violation of the stay. Instead, all that is required is that a party violated the stay with actual knowledge or reason to know that a case had been filed. In re Bragg, 56 B.R. 46 (Bankr. M.D.Ala. 1985). I therefore find that a willful violation of the stay occurred as a result of this contact alone. However, there was no evidence of any damage sustained by Debtors. The evidence before this Court shows that the Debtors did not sign the reaffirmation agreement proposed by Gilman. Gilman did not take any action to foreclose until this adversary proceeding was filed. Therefore, I award only nominal damages of $50.00 and attorney's fees of $250.00 for the prosecution of this action for willful violation of 11 U.S.C. Section 362.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that Gilman

United Federal Credit Union did willfully violate the stay.

ORDERED FURTHER that the Plaintiffs shall recover of the Defendant $50.00 in damages and $250.00 in attorney's fees for the prosecution of this action.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia
This 14th day of July, 1989.

BK 95
(Rev. 8/83)

FILED
at 10 O'clock & 23 min. A M
Date 7/14/89
MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia

United States Bankruptcy Court

For the SOUTHERN District of GEORGIA

ALPHONZO HARRIS, JR.
JOY SAN HARRIS

Plaintiff

v.

GILMAN UNITED FEDERAL CREDIT UNION

Defendant

Case No. 88-20496

Adversary Proceeding No. 89-2003

JUDGMENT

☒ This proceeding having come on tor trial or hearing before the court, the Honorable Lamar W. Davis, Jr., United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered,

[OR]

☐ This proceeding having come on for trial before the court and a jury, the Honorable , United States Bankruptcy Judge, presiding, and the issues having been duly tried and the jury having rendered its verdict,

[OR]

☐ The issues of this proceeding having been duly considered by the Honorable , United States Bankruptcy Judge, and a decision having been reached without trial or hearing,

IT IS ORDERED AND ADJUDGED:

That the Plaintiffs, ALPHONZO HARRIS, JR., and JOY SAN HARRIS, shall recover of the Defendant, GILMAN UNITED FEDERAL CREDIT UNION, the principal sum of Fifty Dollars and 00/100 Cents ($50.00) in damages and Two Hundred Fifty Dollars and 00/100 Cents ($250.00) in attorney's fees for the prosecution of this action, together with interest at the rate of 8.85% per annum from date until paid in full.

UNITED STATES BANKRUPTCY COURT ★ SEAL

[Seal of the U.S. Bankruptcy Court]

Date of issuance: July 14, 1989

MARY C. BECTON
Clerk of Bankruptcy Court

By: Patsy C. Burkhalter
Deputy Clerk